Via Federal Express and email: docket@energy.state.ca.us

July 19, 2004

Siting Committee
California Energy Commission
1516 Ninth Street, MS-12
Sacramento, CA 95814-5512

C/o California Energy Commission Docket Office
Attn: Docket 04-Sit-1
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

RE: Comments in response to CEC's June 28, 2004 Siting Committee's workshop to investigate the state's petroleum infrastructure.

Dear Siting Committee:

We write on behalf of Communities for a Better Environment (CBE) and our thousands of members who live and breathe in California. CBE thanks CEC staff members Rick Buell and Daryl Matz for extending the deadline for submission of public comments to July 19, 2004.

CBE is an environmental health and justice organization with offices in Huntington Park and Oakland, California. CBE works directly with communities of color who live in heavily industrialized urban areas such as Wilmington and Contra Costa County, where thousands of CBE members live, surrounded by oil refineries and other industrial facilities that continuously release toxic pollution.

As advocates for the environment and public health, CBE is closely monitoring the One-Stop Permitting for Petroleum Infrastructure proposal. CBE opposes permitting changes that would ease restrictions on pollution controls, environmental justice requirements, health risk assessments, or studies comparing how a project's toxic emissions will impact surrounding communities in light of current pollution levels and other project emissions in the vicinity.

The comments will focus on two topics: 1) CEC's failure to allow meaningful public participation in the review of its One-Stop Permitting proposal; and 2) CEC's refusal to hear arguments about the irreparable harm to the environment and human health that could result from the current proposal's implementation. Together, these issues call into question the CEC's commitment to public participation and environmental justice.

1. CEC has not allowed for meaningful public participation in the decision-making process of the One-Stop proposal.

Recent actions by the CEC contradict its stated encouragement of public participation:

> We are extremely interested in your opinions and experiences about the current petroleum infrastructure permitting process in California and how it may be improved upon. As we initiate a process of collaboration with all stakeholders involved in this issue, it is very important to us that the environmental justice and labor communities provide input and feed-back (*sic*) throughout the entire process – from start to finish (whatever that may turn out to be).
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> *– Letter from CEC Public Adviser Margret Kim to CBE Legal Director Scott Kuhn dated February 2, 2004, notifying him of a March 24th workshop in Wilmington.*

The letter from Margret Kim to Scott Kuhn (Attachment 1) was sent on February 26th, nearly one month before the March 24th workshop. CBE had time to discuss the issue in detail with CBE staff and meet with CBE members in Wilmington to hear their concerns about the One-Stop Permitting concept before the workshop. CBE appreciates CEC's reasonable notice for this workshop.

At the March 24th workshop, four Wilmington community members and two staff members represented CBE. Each one filled out CEC's sign-in sheet with contact information, expecting to be notified of future meetings. The CBE group was among dozens of other participants who made oral comments unanimously opposing the proposal. Participants included members of the public, labor unions, environmental groups, and city and county officials.

The expertise of commentators and force of the arguments presented visibly surprised CEC staff. The strong opposition, demonstrated by each commentator that approached the microphone to express different views about why the proposal is inadequate, was impressive.

The turnout at the meeting, about 40 participants, was equally impressive given the fact that there was another important environmental justice meeting nearby at the same time.

When Gilbert Estrada, representing Physicians for Social Responsibility, asked why he saw no one recording the public testimony, participants were stunned to learn that the meeting was not being documented for the official record. Their voices would not be heard beyond the walls of the Wilmington community room.

CBE will briefly summarize testimony presented at the March 24th Wilmington meeting in Section 2, below, so that it will be part of the official record.

After the public comment period of the workshop, Public Adviser Margret Kim stated to CBE Attorney Maria Hall, "This wasn't how it was supposed to be!" Ms. Kim explained that it was supposed to be an informational workshop, where CEC staff would present their recommendations to the public and they could ask questions. Ms. Hall started to ask her a question, but Ms. Kim turned around and walked away. CEC was clearly not prepared for the public to be so well informed or opposed to this proposal.

On the afternoon of Friday, June 25th, CBE's Huntington Park office received another letter from CEC Public Adviser Margret Kim. This time, the letter was addressed to a former staff member who left CBE months before. The letter was a notice for the Siting Committee Workshop on the One-Stop Permitting issue. The meeting would be held in Sacramento on the following Monday, June 28th. Unlike the former workshop, **the June 28th meeting was to be recorded for the official record**.

CBE Legal Director Scott Kuhn was surprised both by the late notice and because the letter was not addressed to him, as he was the one contacted by Ms. Kim for the March 24th workshop. CBE Attorney Maria Hall and Community Organizer Agustin Eichwald were equally surprised not to receive notification, as they had both filled out CEC's sign-in sheet at the March 24th workshop with full contact information. A brief survey of other March 24th participants revealed they did not receive notification of the June 25th meeting either. Will Rostov, a CBE attorney in the Northern California office, although on the list, also did not receive notice.

On Monday, June 28th, CBE Legal Director Scott Kuhn and Staff Attorney Maria Hall each left messages for the Public Adviser asking why they had not been notified of the meeting. A CEC staff member called CBE to apologize later that day, explaining it was a mistake. However, there is no excuse for CEC's failure to notify the public and parties it knows are interested in the fate of the proposal.

CEC's last-minute notice effectively prevented CBE's Southern California staff and community members from participating in the June 28th meeting. Will Rostov from CBE's Oakland office was able to rearrange his schedule at the last minute and attend the meeting.

The June 28th meeting should have been an opportunity for CBE members and the public to voice their concerns about the proposal to a wider audience, including CEC commissioners, representatives from the oil companies, and government officials who were in attendance. In fact, the March 24th workshop held in the community should have been a formal opportunity for the public to give testimony. The CEC would have demonstrated its desire to hear community concerns. They could have had community testimony transcribed for the official record of proposal proceedings, as the oil industry representatives and representatives from various government agencies were allowed to do. Instead, the CEC created a process where the public had to attend two different meetings to be heard. The formal workshop in Sacramento was far away from the oil refinery communities.

Mr. Rostov was the *only* environmental justice advocate present at the June 28th meeting. This was surprising in light of the fact that so many others attended the "informal" workshops in March. However, it was not surprising when considering that those participants were never informed of the June 28th meeting, and other interested parties were given such late notice.

The fact that CEC staff made no record of the March 24th workshop where the community had the opportunity to share their concerns, along with the fact that CEC failed to notify workshop participants about the "formal" June 28th meeting that would be recorded, even though it had contact information of those people from sign-in sheets, suggest that CEC may want to avoid the opposition and public controversy surrounding the One-Stop Permitting issue.

Additionally, in a Public Records Act request, CBE acquired emails that demonstrate the longstanding collaboration between CEC staff and Western State Petroleum Association (WSPA) representatives. They developed this proposal together, before it was ever presented to the public, including other government agencies. This is despite the fact that Ms. Kim claimed the CEC sought, "collaboration with all stakeholders" and feedback from environmental justice and labor communities "throughout the entire process – from start to finish."

CEC's actions do not parallel the good intentions expressed in its public relations materials. We hope that CEC is not intentionally thwarting the public process in order to push the proposal through as quickly and with as little opposition as possible. We hope CEC's discouragement of public participation does not foreshadow how it will treat the

public should the proposal be implemented. The streamlining of public process in the One-Stop permitting proposal itself, including its lack of opportunity for local participation and limited judicial review, is one of the public's major concerns.

We ask that the CEC review its procedures to ensure that the public has as many opportunities as WSPA to discuss the proposal with and make recommendations to CEC staff and commissioners. We also ask that CEC prepare a formal "interested persons" list and mail all meeting notices to those on the list. We ask that CEC add the sign-in sheet contact information for all participants from past meetings.

Attached is a list of the names and contact information of CBE staff members who should receive notice (Attachment 2).

2. The CEC must carefully analyze the irreparable harm that could result from the proposal's implementation to human health and the environment before it attempts to approve it.

There are many reasons why petroleum facilities must go through extensive permitting before commencing a new project or expansion. For example, petroleum refining emits carcinogenic and toxic chemicals that pose a substantial health risk to workers, the public, and the environment.

An historical review of refinery accidents, explosions, pipeline leaks, oil tanker spills into the ocean, and the endless litigation against oil companies highlight the realities of the dangers of working with petroleum. While the CEC compares this proposal to its current jurisdiction over siting and permitting for power plants, oil refineries and related operations are fundamentally different than power plants. Refineries are far more complex and volatile.

Companies that profit from producing inherently dangerous products have a special responsibility to the public, including their workers, to produce their product as safely as possible. Further, they have a duty to conduct business in a way that will help ensure availability of our natural resources such as petroleum, clean air, and clean water for future generations.

Participants at the March 24th workshop shared numerous other concerns about the proposal, which are summarized below. After reviewing the June 28th meeting transcripts, it appears that the concerns raised by commentators are still unanswered.

General comments opposing the proposal included a Carson City Council member who submitted a letter from the City of Carson opposing the project. A representative from

the South Coast Air Quality Management District (SCAQMD) reported that the Legislative Committee had taken a position in opposition to the proposal and that the SCAQMD Governing Board was expected to do the same in a vote on March 12th. Below is a summary of specific topics brought up during the public comment period.

A. Participants questioned the impartiality of the CEC in light of its close working relationship with WSPA and apparent alienation from the public.

Jesse Marquez, executive director of Coalition for a Safe Environment; Agustin Cheno Eichwald, CBE community organizer; and Joe Lyou, PhD, executive director of California Environmental Rights Alliance, each expressed concern about CEC's undemocratic decision-making process (i.e., all five commissioners are appointed, not elected, so they face no danger of being voted out of office if they make unpopular decisions). The concern is that because there is a lack of public accountability, CEC staff and commissioners may be more susceptible to influence from oil industry lobbyists.

It was not until a week later that CBE learned how relevant this concern is. An article published in the *L.A. Weekly* revealed that the CEC proposal "is backed by a powerful husband-wife team: commission member James D. Boyd and his wife, Catherine Reheis-Boyd." The article explained that Ms. Reheis-Boyd is WSPA's chief of staff and the industry's registered lobbyist in Sacramento. (See Attachment 3, "The Well Oiled Deal: Taking away local control of refineries is a family matter," by William J. Kelly, *L.A. Weekly*, March 31, 2004.)

While Commissioner Boyd told the reporter that he would not participate in any hearings on the issue, CBE later found out through a Public Records Act request that CEC staff are in continual dialogue with Ms. Reheis-Boyd and are deferential to her (See, eg., Attachments 7-9). We also learned that she does not use the name Boyd, and instead refers to herself as "Cathy Reheis" in email correspondence with CEC staff.

This husband-wife relationship between an oil industry lobbyist and a CEC commissioner places CEC staff in an unfair and awkward position. It is natural that staff would find it difficult to contradict the opinions and demands of the wife of a CEC commissioner. We ask that the CEC fully investigate the appropriateness of Ms. Reheis-Boyd's role and take steps to insure that all conflict of interest rules are being complied with.

More evidence calling into question CEC's impartiality was still to come. In May, CBE received documents from the CEC in response to a Public Records Act (PRA) request made by Maria Hall on March 22nd. Ms. Hall requested copies of "any correspondence

including, but not limited to, letters, notes, and meeting minutes in the possession of the CEC regarding Western States Petroleum Association from June 2002 and the date of this letter."

The PRA material contained a series of emails between CEC and WSPA staff between February and March, 2004 (Attachments 5 - 9). Also among the PRA documents was a proposal entitled, "Draft Proposal to Streamline Permitting and Rules Affecting Transportation Fuels Capacity." The proposal was submitted to the CEC by WSPA on March 17th, one week before the first "informal" public meeting (See Attachment 4).

The earliest email was dated February 2nd, over seven weeks before the first public workshop took place (on March 24th). Gordon Schremp was coordinating meeting times between CEC staff and "industry representatives to discuss the issues associated with lead permit authority for petroleum infrastructure" (See Attachment 5).

The second email was sent on February 18th. CEC staff member Rick Buell wrote to Gina Grey and Joe Sparano, thanking WSPA for "our meeting last week" regarding infrastructure permitting (See Attachment 6). Mr. Buell asked when WSPA would be submitting "comments or alternative permitting strategies." This email was sent over a month before the public meeting on March 24th.

The next exchange of emails was on February 23rd between Rick Buell and Cathy Reheis, WSPA chief of staff and wife of CEC Commissioner James Boyd. Mr. Buell states, "I understand we are all in agreement that WSPA's offer to meeting with our consultant and have a round table discussion on permit problems is a good idea" (See Attachment 7). Ms. Reheis agrees and responds, "I'll call you to arrange a time to discuss the 'go forward' plan with your team… Thanks for the continued dialogue. I'm confident that it will result in useful information to streamline the process." This email exchange occurred one month before the public workshops.

One of the most telling emails was sent by CEC staff member Chris Tooker to Cathy Reheis on March 2nd. Mr. Tucker explains why WSPA would not be invited to an upcoming meeting with government agencies: "it is critical that our initial meetings with local governments occur without industry participation to underscore our independence" (See Attachment 8).

Mr. Tooker assures Ms. Reheis that industry groups will be able to participate in future meetings. In response, Ms. Reheis says she "understands" and that she is in discussions about "*how we can be helpful in providing some information to you and your consultants for your upcoming local government meetings*" (Id.) (emphasis added).

Finally, in another email exchange between Mr. Tucker and Ms. Reheis on March 10th (still two weeks before the first public meeting), he reports back to her about the government meetings (See Attachment 9). He explains that the meetings went "*as expected," with agencies "comfortable the way things are"* (emphasis added). This begs the question: If the CEC already knows government agencies are happy the way things are, why is the CEC trying so hard to push through changes as quickly as possible?

Mr. Tucker also mentions that the South Coast Air Quality Management District (SCAQMD) expressed a "significant interest (concern?)" in petroleum infrastructure and would be "participating in the Environmental Justice Group meetings later this month" (Id.). He assures her that CEC has a good working relationships with SCAQMD.

What Mr. Tooker did not tell her was that SCAQMD Executive Officer Barry Wallerstein wrote a letter to CEC Executive Director Bob Therkelsen one week before, on March 4th (See Attachment 10). Dr. Wallerstein demanded to know, first of all, why he had not been notified about CEC's public meeting on March 24th. He learned about the meeting from members of the public who were notified on February 26th. Second, he asked why he just learned from CEC staff that a meeting was being held <u>that day</u> in El Segundo with local government agencies to talk about "Problems and Solutions" for Petroleum Infrastructure. SCAQMD is the local agency with authority over air permits and Title V permits.

Dr. Wallerstein concludes, "We are disappointed that CEC has publicly embarked on the concept of one-stop permitting for refineries, terminals and other related petroleum operations without even discussing this concept with AQMD or giving us advance notices of your meetings" (Id.).

Dr. Wallerstein's letter was dated March 4th, about a month after initial CEC-WSPA meeting about one-stop permitting.

WSPA clearly has had unfair access to the CEC. The fact that the husband-wife relationship of Cathy Reheis-Boyd and Commissioner Boyd puts CEC staff members in an awkward position and gives WSPA special status, as well as the fact that WSPA already has vast resources to lobby and be physically present in Sacramento for meetings and hearings at any time, indicates that getting the public's viewpoints into the debate will be challenging.

To make matters worse, the CEC held a formal workshop with a panel representing the oil industry and failed to have a panel representing community and environmental justice concerns, despite the outpouring at the March 24th "informal" workshop in Wilmington.

The fact that CEC tried to exclude SCAQMD from meetings suggests that CEC's agenda may not be compatible with the interests of the public and air districts, which includes creating a cleaner, healthier environment. Instead, CEC's priority appears to be to please WSPA by getting the proposal approved as soon as possible, before adequately addressing potential consequences of the proposal's implementation brought into the open by members of the public.

This calls into question CEC's future ability or desire to regulate the industry where it has jurisdiction. It is unknown whether CEC would vigilantly monitor facilities and enforce the law, or install unpopular but necessary mitigation measures to compensate for the increases in air pollution that projects cause.

B. Many speakers at the March 24th "informal" workshop commented that local refineries should be subject to local oversight and control rather than a Sacramento agency that has little knowledge of a community's environmental needs and is not accountable to voters.

Two planning commissioners from the City of Carson commented that by taking away local control for permitting, pollution problems in industrialized communities will continue to worsen, since the CEC can never be as knowledgeable about the environmental needs of the local communities as local agencies are. One commissioner stated that she did not want decisions based on regional or state air quality studies because they do not reflect the reality of how polluted a community such as Carson or Wilmington is. They concluded that decisions based on regional or state data would only create more environmental problems for communities that are already overburdened by toxic pollution.

Three CBE community members from Wilmington, a resident of Carson, and Jesse Marquez also agreed that decisions affecting the health of local residents should be made locally where decision-makers can be held accountable to the people. For example, if a City is lead agency, council members can be voted out of office for unpopular decisions.

CBE staff member Agustin Eichwald commented that local agencies are more likely to work out problems with community groups such as CBE. CBE has a history of solving complex and controversial problems with city and county governments, as well as the SCAQMD. Mr. Eichwald warned that it may be more difficult to work with CEC because of its location and also because CBE's past experience with CEC has not been as positive as it has been with other agencies. CBE Attorney Maria Hall emphasized CBE's long history of working with SCAQMD staff and board members, particularly on issues of environmental justice. She asked why CEC did not involve SCAQMD earlier in the process. No one responded.

C. Participants expressed concern that CEC would merely "rubber stamp" refinery permits, comparing CEC's past history of approving permits for almost every power plant project that has ever been submitted.

Both Joe Lyou of the California Environmental Rights Alliance and CBE's Agustin Eichwald questioned CEC about its history of permitting power plants. Joe Lyou said, "Permits shouldn't be pre-ordained," and pointed out that the vast majority of power plant projects are approved.

Agustin Eichwald asked, "Have you ever turned down a power plant permit?" CEC staff answered that there were "at least two" that were turned down since 1976: one in Lucerne Valley that never even made the required finding of need, and another in the San Francisco Bay area.

Mr. Eichwald brought up the proposed Nueva Azalea project in South Gate. CEC promoted the project even though the predominantly Latino community of South Gate was already suffering from some of the worst air quality in the basin. Because of the community's tireless efforts to stop the project, the company relented. Stepping away from CEC procedure, it agreed to let the public decide by vote whether the project would go forward. CEC's procedure would have allowed the project to commence no matter how strongly the community opposed it. The project was voted down and the company kept its word by withdrawing its proposal.

Ironically, when CBE Attorney Will Rostov was giving comments at the June 28th Siting Committee Workshop, Chairman Geesman cited the Nueva Azalea project as an example of how the system worked in CBE's favor to prevent bad projects. Mr. Rostov answered that it was the *company's* decision to make the process democratic and abided by its promise to withdraw its proposal since the people voted it down. He added that the CEC was an impediment to that process. If left to the CEC instead of the company, the project would have been approved.

D. Participants expressed alarm over the CEC's plan to limit judicial review of its decisions solely to the California Supreme Court.

Richard Slawson from the Los Angeles and Orange County Construction, Building and Trade Council requested that CEC come up with a more balanced judicial review process. He stated that his organization intervene in almost every refinery project. If review were limited to the California Supreme Court, it would be nearly impossible to challenge CEC decisions. It would be too expensive and difficult.

Joe Lyou also commented on this issue. He asked the CEC staff whether the Supreme Court's review was mandatory or discretionary. If it is discretionary, it effectively eliminates all remedies currently available to the public. The CEC staff did not know the answer at that time. **CBE requests that CEC publish an official response to that question.**

CBE agrees with the comments presented Richard Slawson and Joe Lyou. The current process mandated by the California Environmental Quality Act (CEQA) allows many opportunities for judicial review. If someone disagrees with a project approval, he or she may file a lawsuit in a local court against the lead agency. If that is unsuccessful, appeals can be filed. Having to initially present one's case to the California Supreme Court would be prohibitively expensive for most members of the public and nonprofit organizations. Limiting the judicial process to Supreme Court review will pose fewer opportunities to negotiate and come up with settlements that benefit all parties. Finally, the Court would be a plaintiff's one and only chance to overturn the CEC's decision.

E. <u>At least eight participants included their concerns about environmental justice in their testimony.</u>

One of the reasons community members are concerned about keeping permitting decisions local is because they know that if a large, statewide agency such as CEC takes over the process, it will never truly understand the needs of residents who live closest to refineries and other petroleum facilities, such as environmental justice issues.

At the June 28th meeting, the CEC presented photographs of oil refineries in rural areas, surrounded by green grass. Unfortunately, that is not reality. Refineries are located primarily in highly polluted urban neighborhoods with residents who are lower-income people of color. These *people* bear the burdens of the petroleum infrastructure's operations and share in little or no benefits.

Environmental justice has been defined as the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, income, or education level. People who live closest to oil facilities, such as in Wilmington, not only breathe the worse quality air than others in the region, but also have poorer health. Residents are primarily low-income, people of color who have very little political power.

The regional air quality in the South Coast Air Basin is already among the unhealthiest in the country. A House Government Reform Committee report found that the excess cancer risk in the South Coast Air Basin was 426 in a million - 426 times greater than the Clean Air Act's goal of 1 in a million.

Wilmington is one of the most polluted areas in the South Coast Air Basin. SCAQMD MATES II data indicates that the excess cancer risk in Wilmington is *1537 in one million persons*. Children suffer most, with chronic asthma and other health problems.

Several years ago, SCAQMD identified Wilmington as an environmental justice community that deserved special attention and resources, including community outreach and extensive air quality monitoring. SCAQMD holds regular public meetings in Wilmington before any major project is approved. CBE regularly works with SCAQMD and the public to help promote environmental justice. Together, we have made progress towards creating a cleaner environment and informed public.

CBE doubts that CEC would have the motivation, expertise, or financial resources to continue SCAQMD's work in environmental justice communities. Unfortunately, streamlining would contribute further to the problem. Wilmington residents live among five refineries, the Ports of Long Beach and Los Angeles, terminals, and pipelines. Expansions to these facilities will inevitably increase pollution in these areas. While companies may argue they will not increase pollution in an area because they can purchase pollution credits that may benefit the region or state as a whole, they do not actually reduce pollution in areas that are already overburdened.

F. <u>The current permitting process is more protective of public health and the environment.</u>

The California Environmental Quality Act (CEQA) assures that any project with environmental consequences will provide full disclosure to the public. CEQA requires that a project with "potentially significant impacts" on the environment must conduct an Environmental Impact Report (EIR). The EIR is intended to disclose the environmental consequences of a project. It requires that alternative measures be considered that would prevent or minimize the risks.

CEQA provides for an extensive public review process. If an EIR is prepared, individuals who submit written comments within the public comment period will receive a response. Many lead agencies, such as the South Coast Air Quality Management District, regularly hold public meetings in the area where a project is located to hear directly from the affected community.

The purpose of an EIR is to provide public agencies and the public in general with detailed information about a project's potential effects on the environment; to list ways in which significant effects might be minimized; and to indicate alternatives to the project.

(Pub. Resources Code §21061; see also §21002.1.) The courts have described an EIR as an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached "'ecological points of no return.'" County of Inyo v. Yorty, 32 Cal.App.3d 795, 810 (3d Dist. 1973).

The California Supreme Court has stated that CEQA should be "scrupulously followed," so that "the public will know the basis on which its responsible officials either approve or reject environmentally significant action," and will be able to "respond accordingly to action with which it disagrees." Laurel Heights Improvement Assoc. v. Regents of the Univ. of Calif., 47 Cal.3d 376, 392 (1988). Thus, the EIR process "protects not only the environment but also informed self government." Id.; see also Sierra Club v. State Board of Forestry, 7 Cal.4th 1215, 1229 (1994).

Another benefit of CEQA is that it requires participation from a diversity of agencies. This provides for more thorough and meaningful review. For any project that may have significant effects on the environment, CEQA requires that a lead agency be selected.

CEQA provides that the local agency with land use authority should be the lead agency. The lead agency is the public agency that has the principal responsibility for carrying out or approving the project. The lead agency researches the project and prepares an Environmental Impact Report, if necessary.

CEQA also designates "responsible agencies" which are public agencies other than the lead agency that have discretionary authority over the project. The project usually needs permits from the responsible agencies. A new or expanding project generally needs many permits from local, state, and federal authorities. These may include the City the project is located in, the Regional Water Quality Control Boards, and the Department of Toxic Substances Control and others. These may be designated "responsible agencies" and will be expected to comment on the project analysis that is prepared by the lead agency.

Each agency has its own expertise and stake in the project. An air district, for example, is knowledgeable about the local air quality and about what other local projects may contribute cumulatively to the pollution in the area. A City has its own municipal code and general plan for zoning, nuisance, and future development. This expertise will be lost if the only reviewing entity is CEC in Sacramento that issues a single permit. It is almost certain to overlook problems and dangers that would have been illuminated in the current system.

In sum, if the CEC is the only agency responsible and "streamlines" the permitting process, it will make it more difficult for members of the public to have meaningful

participation in the process. It is doubtful that the CEC, whose main interest is in streamlining the process for the oil industry, will have the resources to truly represent the community's interest and understand its unique needs.

Because CEQA requires the local agency with land use authority, it ensures *local* decision-making regarding petroleum infrastructure projects, giving the public ample opportunity to participate, and demands that potential adverse impacts be reviewed, assessed and mitigated.

G. New and modified sources of pollution will still be subject to the Federal Clean Air Act's New Source Review (NSR) and Prevention of Significant Deterioriation (PSD) requirements.

Even with CEC's "One Stop Permitting" fully implemented, projects will be subject to the federal requirements contained in the Clean Air Act's New Source Review (NSR) and Prevention of Significant Deterioration (PSD) provisions unless the State Implementation Plan (SIP) is also changed.

The NSR provisions of the Clean Air Act require that new and modified sources apply Best Available Control Technology (BACT), obtain offsets, and perform modeling of new emissions.

The PSD provisions require that new and modified sources located outside the boundaries of nonattainment areas be subjected to a separate set of pre-construction review and pollution requirements under the PSD provisions of the Act, including studying whether a new or modified source will contribute to air pollution which violates any National Ambient Air Quality Standards or PSD increment. (CAA §165(e).)

Since local air districts issue the permits, they can be delayed through permitting rules, hearing board appeals, then court. So, there is still a risk that the application process will be delayed, even with the "One Stop Permitting" fully implemented. Therefore, it is questionable that the CEC's promise of "streamlining" will fulfill its promise for a more efficient approval process. This should be considered before the current system is dismantled and an entirely new process, which may or may not do what it intends to do, is implemented.

Conclusion

At a time where the federal government is actively weakening the Clean Air Act and reducing its enforcement of the laws that relate to oil refineries (see Attachment 12, "Is the

EPA Doing Enough?" by Jeff Classsen and Scott Streater, *Fort Worth Star Telegram*, July 18, 2004), it is important that California maintain its strong standard for environmental protection and public participation. Changing the rules to One-Stop permitting will further erode laws that protect communities from the harmful effects inherent in the petroleum infrastructure. While the current permitting process is not perfect, working to improve the current process is preferable to starting over with an entirely new system that may or may not achieve the results it promises.

We urge the CEC to abandon its push for One-Stop permitting. It will only lead to environmental injustice.

Sincerely,

Maria Hall
Staff Attorney

Will Rostov
Staff Attorney

cc: Senator Byron Sher
Senator Tom Torlakson
Terry Tamminen, Agency Secretary, California Environmental Protection Agency
Jack Broadbent, Executive Officer, Bay Area Air Quality Management District
Barry Wallerstein, Executive Officer, South Coast Air Quality Management District